

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK DALE FONTROY, et al., : CIVIL ACTION  
  
Plaintiffs :  
  
v. :  
  
JEFFREY A. BEARD, et al., :  
  
Defendants : NO. 02-CV-2949

ORDER

AND NOW, this day of May, 2007, it is ORDERED that Defendants' Motion for Stay of Proceedings on Petition for Attorney Fees and Costs is GRANTED. All proceedings on the Petition for Attorney Fees and Costs Pursuant to 42 U.S.C. § 1988 filed by Teri B. Himebaugh, Esquire, (Document 307) are stayed until the conclusion of all appeals from the Court's orders of May 3 and May 8, 2007. The time within which defendants must respond to the Petition for Attorney Fees and Costs Pursuant to 42 U.S.C. § 1988 (Document 307) is extended until thirty days after the final disposition of all appeals from the Court's Orders of May 3 and May 8, 2007.

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TIMOTHY J. SAVAGE, J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK DALE FONTROY, et al., : CIVIL ACTION

Plaintiffs :

v. :

JEFFREY A. BEARD, et al., :

Defendants : NO. 02-CV-2949

DEFENDANTS' MOTION FOR STAY OF PROCEEDINGS ON PETITION FOR  
ATTORNEY FEES AND COSTS (DOCUMENT NO. 307)

Defendants move the Court to stay all proceedings on the Petition for Attorney Fees and Costs Pursuant to 42 U.S.C. § 1988 filed by Teri B. Himebaugh, Esquire (Document No. 307), and extend their time to respond further to it, until all appeals from the Court's orders of May 3 and May 8, 2007 have been concluded. Defendants allege in support of this Motion:

1. On May 3, 2007, the Court filed a Memorandum Opinion and Order granting defendants' summary judgment motion in part and denying it in part and granting plaintiffs' summary judgment motion in part and denying it in part and entering an injunction.
2. On May 7, 2007, Defendants filed a Motion to Amend Judgment. The Court denied the Motion on May 8, 2007.
3. On May 8, 2007, Teri B. Himebaugh, Esquire, filed a Petition for Attorney Fees and Costs Pursuant to 42 U.S.C. § 1988.

4. On May 10, 2007, Defendants filed a Notice of Appeal from both the May 3 and May 8 orders.

5. On May 18, 2007, one of the plaintiffs filed a Notice of Appeal from the Court's May 3 decision.

6. Section 1988 permits the Court to award attorneys' fees and costs to a "prevailing party."

7. The identity of the "prevailing parties" will not be finally determined until all appeals from the Court's orders of May 3 and May 8 have been concluded.

8. The time of defendants' counsel, Ms. Himebaugh, the plaintiffs, and the Court would not be well spent by considering and litigating the Petition for Attorney Fees until the identities of the prevailing parties have been finally determined.

9. Ms. Himebaugh has informed undersigned counsel that she does not oppose this Motion.

WHEREFORE, Defendants ask the Court to stay all proceedings on the Petition for Attorney Fees and Costs Pursuant to 42 U.S.C. § 1988 (Document 307) until the conclusion of all appeals from the Court's orders of May 3 and May 8, 2007, and to extend defendants' time to respond further to the Petition until thirty days after the final disposition of the appeals.

THOMAS W. CORBETT, JR.  
Attorney General of Pennsylvania

By: s/ John O. J. Shellenberger

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John O. J. Shellenberger  
Chief Deputy Attorney General  
Attorney I.D. No. 09714  
Attorney for Defendants

CERTIFICATE OF SERVICE

I, John O. J. Shellenberger, hereby certify that DEFENDANTS' MOTION FOR STAY OF PROCEEDINGS ON PETITION FOR ATTORNEY FEES AND COSTS (DOCUMENT NO. 307) has been filed electronically and is available for viewing and downloading from the Court's Electronic Case Filing System. The ECF System's electronic service of the Notice of Electronic Case Filing constitutes service on the following, who has consented to electronic service:

Teri B. Himebaugh, Esquire.

I further certify that a true and correct copy of DEFENDANTS' MOTION FOR STAY OF PROCEEDINGS ON PETITION FOR ATTORNEY FEES AND COSTS (DOCUMENT NO. 307) was mailed on May 23, 2007, by first class mail, postage prepaid to:

Derrick Dale Fontroy, AY-7513  
State Correctional Institution  
at Fayette  
50 Overlook Drive  
LaBelle, PA 15450-1050

Theodore B. Savage, CB-2674  
State Correctional Institution  
at Cresson  
Drawer A, Old Route 22  
Cresson, PA 16699-0001

Aaron Christopher Wheeler, BZ-2590  
State Correctional Institution  
at Graterford  
P.O. Box 244  
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s/ John O. J. Shellenberger

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